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Arbitrating Your Case under the Securities Rules of the American Arbitration Association

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Investors and others involved in the securities industry will likely remember 1987 for two events: the United States Supreme Court decision in *Shearson/American Express* v. *McMahon* in June and "Black Monday" in October. Shortly after the Court's decision, which validated the use of arbitration to resolve customer–broker disputes arising out of the Securities Exchange Act of 1934, the American Arbitration Association promulgated Securities Arbitration Rules.

This article examines the new rules, highlighting how they differ from the AAA's Commercial Arbitration Rules and the rules of arbitration systems operated by the securities industry. The background leading up to the Supreme Court's decision in the *McMahon* case is analyzed, and a study is made on the impact on case filings of both *McMahon* and "Black Monday."

On June 8, 1987, the United States Supreme Court handed down its decision in *Shearson/American Express* v. *McMahon*.[1] By a five-to-four vote, the Court held that clauses in securities agreements providing for the arbitration of future disputes do not violate the antifraud provisions of the 1934 Securities Exchange Act,[2] and are thus enforceable in disputes involving Securities and Exchange Commission (SEC) rule 10b-5.[3] The Court also found unanimously that claims involving violations of the Racketeer Influenced and Corrupt Organizations (RICO) Act[4] are subject to arbitration.

In anticipation of an increasing caseload of securities disputes, the American Arbitration Association, with the assistance of a special ad hoc advisory committee and input from the Securities and Exchange Commission, issued Securities Arbitration Rules, effective September 1, 1987. This article examines the arbitration of securities disputes under these new rules.

BACKGROUND

The controversy over the arbitrability of securities claims involves the apparently conflicting policies of the U.S. Arbitration Act[5] and the federal securities acts. The primary purpose of both the Securities Act of 1933[6] and the Securities Exchange Act of 1934 is the protection of the investing public. Section 14 of the 1933 Act and section 29(a) of the 1934 Act prohibit any "condition, stipulation, or provision" binding a plaintiff to waive compliance with provisions of the acts and the rules and regulations of the SEC. Investors are provided an express right to a private cause of action for fraud against parties such as brokers, issuers, and underwriters under the 1933 Act and an implied right to a private cause of action under the 1934 Act and rule 10b-5 promulgated thereunder. The primary purpose of the U.S. Arbitration Act is to provide for enforcement of agreements to arbitrate future disputes, and awards issued thereunder, for transactions involving interstate commerce. The policy in favor of arbitration conflicts with the securities acts when a broker seeks to compel an aggrieved investor to arbitrate based on a pre-existing arbitration agreement between the parties.

THE *WILKO* DOCTRINE

In *Wilko* v. *Swan*,[7] an investor brought suit against the brokers from whom he had purchased stock, seeking damages under section 12(2) of the Securities Act of 1933. The margin agreement between the parties mandated arbitration of any future disputes between the customer and the broker, and the brokers moved to stay the litigation based on the existence of this arbitration clause. The investor argued, however, that the arbitration provision was invalid because section 14 of the Securities Act of 1933 prohibited a waiver of any provision in the Act, including the right to sue for fraud. The Supreme Court upheld the investor's contention, finding that the right to sue, when read in conjunction with the nonwaiver provision of the Act and public policy considerations, rendered the claim nonarbitrable. An investor could not be bound in advance to submit a federal securities law fraud claim to arbitration:

> The words of article 14 . . . void any "stipulation" waiving compliance with any provision of the Securities Act. This agreement to arbitrate is a "stipulation," and we think that the right to select the judicial forum is the kind of "provision" that cannot be waived under article 14 of the Securities Act.

The *Wilko* doctrine was extended to domestic claims arising out of the Securities Exchange Act of 1934 in *Reader* v. *Hirsch & Company*.[8] In that case, the margin agreement contained a "future disputes" arbitration provision. Drawing an analogy to *Wilko*, the district court found that a fraud claim based on the 1934 Act could not be arbitrated under a future disputes clause. *Wilko* was later extended by the circuit courts to securities disputes arising out of section 10(b) of the 1934 Act.[9]

EROSION OF *WILKO*

A major exception to *Wilko* came about in *Scherk* v. *Alberto-Culver Company*.[10] An agreement between an American manufacturer and a German citizen provided that any con-

[1] __U.S.__, 107 S. Ct. 2332 (1987).

[2] 15 U.S.C. § 78j(b).

[3] 17 C.F.R. § 240.106-5.

[4] 18 U.S.C. § 1961 *et seq.*

[5] 9 U.S.C. § 1 *et seq.*

[6] 15 U.S.C. § 77a *et seq.*

[7] 346 U.S. 427 (1953).

[8] 197 F. Supp. 111 (S.D.N.Y. 1961).

[9] See, for example, Allegaert v. Perot, 548 F.2d 432 (2d Cir.), *cert. denied*, 432 U.S. 910 (1977).

[10] 417 U.S. 506 (1974).

troversies would be settled by arbitration before the International Chamber of Commerce in Paris. A dispute subsequently arose and the U.S. firm sought relief in American courts, claiming violations of section 10(b) of the Securities Exchange Act and SEC rule 10b-5. The German citizen moved for a stay of litigation pending arbitration of the case pursuant to the agreement. Overturning the lower courts, which had relied on *Wilko* in finding that the arbitration provision was unenforceable, the Supreme Court determined that the matter was subject to arbitration. Two items of importance to the Court were the international character of the case and the fact that the contract was negotiated by knowledgeable legal experts: "Our conclusion today is confirmed by international developments in domestic legislation in the area of commercial arbitration subsequent to the *Wilko* decision."

In recent years, the Supreme Court has squarely endorsed the enforcement of "future disputes" arbitration clauses, even in the face of potentially conflicting statutes. In *Moses H. Cone Memorial Hospital* v. *Mercury Construction Corporation*,[11] the Court held that the U.S. Arbitration Act establishes a "federal policy favoring arbitration." In *Southland Corporation* v. *Keating*,[12] the Court ruled that the U.S. Arbitration Act creates federal substantive law that preempts conflicting state laws where the underlying transactions involve interstate commerce. In the 1985 case of *Dean Witter Reynolds, Inc.* v. *Byrd*,[13] the Court directed arbitration of state law claims arising out of a securities agreement, even though they were "intertwined" with federal securities law claims. In a footnote, the Court intimated that federal securities law claims might be arbitrable. Most recently, the Court ruled, in *Mitsubishi Motors Corporation* v. *Soler Chrysler–Plymouth, Inc.*,[14] that international antitrust disputes were subject to arbitration under a future disputes clause, thus extending the *Scherk* doctrine.

"The securities rules benefit from recent efforts by the AAA to simplify its procedures and provide for more consistency within and between its various sets of rules."

McMAHON

Having ruled in the past that international securities fraud and antitrust matters are arbitrable and that domestic state law securities issues can be arbitrated even if "intertwined" with federal securities claims, the Court in *Shearson/American Express* v. *McMahon* confronted the issue of the enforceability of a future disputes clause in a domestic case involving the 1934 Act.

The facts of the case are as follows. Eugene and Julia McMahon, individually and as trustees for the pension and profit-sharing plans of a New York City funeral home, entered into a customer agreement with Shearson/American Express providing for arbitration of disputes. The McMahons subsequently filed a complaint in federal district court, charging that their broker and Shearson had engaged in fraudulent excessive trading in violation of the 1934 and RICO acts. The complaint further alleged state law claims for fraud and breach of fiduciary duties.

Shearson moved to compel arbitration of all claims pursuant to the customer agreement and the Federal Arbitration Act. The district court ordered arbitration of the federal securities and state law claims, but ruled that the RICO claims were not arbitrable. Relying on *Wilko*, the Second Circuit reversed that part of the judgment ordering arbitration of the securities claims. The Supreme Court granted certiorari to resolve the conflict among the circuits regarding the arbitrability of section 10(b) and RICO claims.

Justice Sandra Day O'Connor, writing for the Supreme Court, held that "[t]he Arbitration Act established a federal policy favoring arbitration, requiring that the courts vigorously enforce arbitration agreements. This duty is not diminished when a party bound by an agreement raises a claim founded on statutory rights." The party opposing arbitration has to show that Congress intended to preclude arbitration.

The American Arbitration Association (AAA) filed an amicus curiae brief before the Supreme Court in support of Shearson, stating that "[t]he Federal Arbitration Act requires enforcement of arbitration clauses for commercial disputes between contracting parties—including disputes based upon statutory claims—unless Congress specifically intended to preclude arbitration."

With regard to the securities claims, the AAA argued that *Wilko* should be reexamined because it was based on a "clearly outdated and improper suspicion of arbitration" rather than on evidence of congressional intent to preclude arbitration. The brief further noted that "[i]n the thirty years since *Wilko* was decided, [the Supreme] Court has overcome the judicial hostility to arbitration reflected in *Wilko* and, in a series of recent decisions, has reflected the intent of Congress as expressed in the Arbitration Act."

[11] 460 U.S. 1 (1983).

[12] 465 U.S. 1 (1984).

[13] 470 U.S. 213 (1985).

[14] 473 U.S. 614 (1985).

While not directly overruling *Wilko*, which dealt with the 1933 Act, the Court held that Congress "did not intend for article 29(a) [of the 1934 Act] to bar enforcement of all predispute arbitration agreements." Reversing the Second Circuit, the Supreme Court held that both the RICO and the section 10(b) claims were arbitrable.

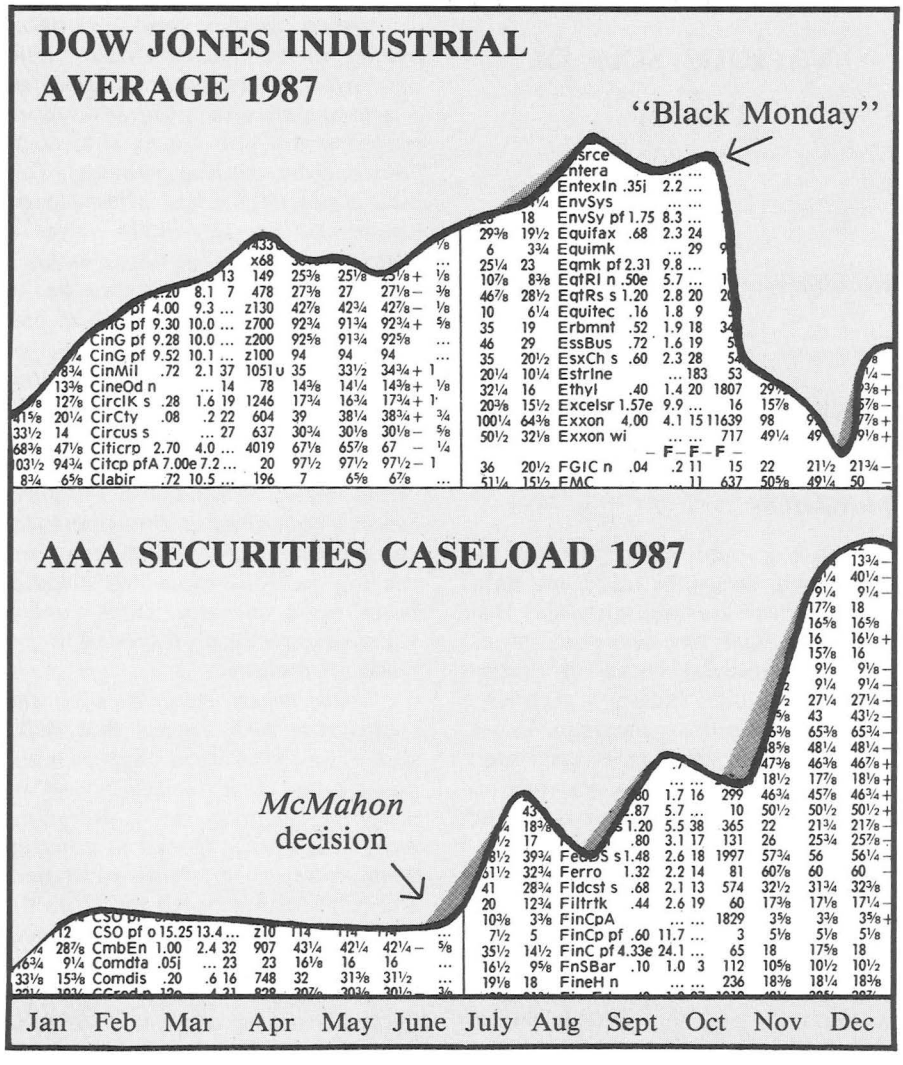
CHOICE OF FORUM

Many predispute arbitration agreements in customer–broker contracts give the customer an option to bring the claim before the AAA or an industry self-regulatory organization (SRO). Although the procedures adopted by the AAA and SROs are generally similar, there are substantial differences with which practitioners should be familiar.[15] Most securities disputes filed with the AAA will be administered under its new Securities Arbitration Rules. The remaining cases will be processed under the Commercial Arbitration Rules.

NEW RULES

In 1986, the American Arbitration Association's 33 offices processed 119 securities disputes involving $15,247,627 in claims. An additional 55 cases, totaling $15,562,533, related to commodities disputes. By comparison, statistics for 1987 show 187 securities disputes, involving $80,988,075 in total claims.[16] Of these, 53 cases were administered under the new Securities Arbitration Rules; the remainder were processed under the AAA's Commercial Arbitration Rules.[17]

The securities rules follow the basic outline of the commercial rules, which have been in use for many years. The securities rules benefit from recent efforts by the AAA to simplify its procedures and provide for more consistency within and between its various sets of rules. The highlights of these rules, which are tailored to the special needs of securities disputes, are analyzed below.



The AAA's securities caseload shows sharp increases after the Supreme Court handed down the McMahon decision in June and after the stock market plunged in October.

Arbitration Agreement

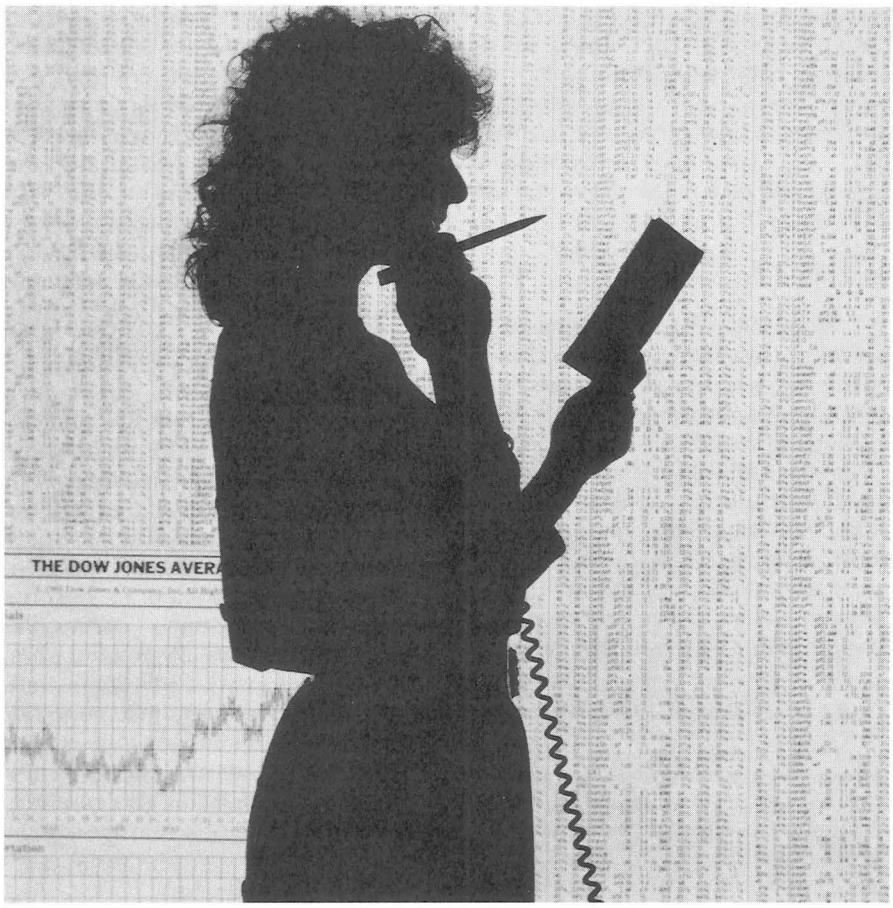
Unlike litigation, arbitration is voluntary—the parties must agree to arbitrate. The written agreement generally takes the form of a clause contained in a contract, such as a customer–broker agreement, stating that if a future dispute between the parties arises out of the contract, it will be submitted to the American Arbitration Association or an industry arbitration forum for administration. An example of a broad clause is contained on the inside cover of the Securities Arbitration Rules,[18] which govern most customer–broker disputes administered by the AAA. This agreement is sometimes referred to

[15] For a comparison of procedures, see David E. Robbins, "Securities Arbitration: Preparation and Presentation," *The Arbitration Journal* 42 (June 1987): 3–18. The model arbitration clause adopted by the Securities Industry Conference on Arbitration allows the claimant to choose the arbitration forum. Use of this model clause by SROs, however, is not mandatory.

[16] Statistics provided by the AAA Department of Case Administration. When securities-related matters, such as commodities and close corporation shareholder disputes, are included in the analysis, there is an increase in case filings from 303 in 1986 to 359 in 1987.

[17] *Id.* In December 1987, monthly filings under the Securities Arbitration Rules (31) were for the first time greater than under the Commercial Arbitration Rules (13).

[18] The standard arbitration clause reads: "Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration in accordance with the Securities Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof."



"In recent years, the Supreme Court has squarely endorsed the enforcement of 'future disputes' arbitration clauses, even in the face of potentially conflicting statutes."

as a future disputes clause, since it commits the parties to arbitrate disputes that have not yet arisen.

If there is no arbitration agreement before a dispute arises, the parties are free to agree to submit their existing case to arbitration. This agreement is more specific than a future disputes clause, since it contains only the parties' agreement to submit a particular pending controversy to arbitration.[19]

[19] The standard submission agreement reads: "We, the undersigned parties, hereby agree to submit to arbitration under the Securities Arbitration Rules of the American Arbitration Association the following controversy: (cite briefly). We further agree that the above controversy be submitted to (one)(three) arbitrator(s) selected from the National Panel of Securities Arbitrators of the American Arbitration Association. We further agree that we will faithfully observe this agreement and the rules and that we will abide by and perform any award rendered by the arbitrator(s), and that a judgment of the court having jurisdiction may be entered upon the award."

Initiating Arbitration

A typical arbitration case might proceed in the following manner: After a dispute has arisen, and if the parties have been unable to settle the problem, one party files what is called a Demand for Arbitration. The Demand is much like a court complaint in that it notifies the other party that a dispute exists and that the party filing the case wishes to exercise its right to arbitrate. The Demand is filed with an AAA regional office and with the other party.[20] The filing party must pay an administrative fee to the Association, which is based on the amount of the claim. The responding party is given 20 days from the Association's initiation of the case in which to assert any answer or counterclaim, although failure to file an answer will be treated as a general denial of the claim.[21] The fee is recoverable, in that the arbitrator is authorized to make a final assessment of the fees against a party.[22] The AAA rules are silent on questions involving statutes of limita-

[20] Securities Arbitration Rules § 6. New York: American Arbitration Association, 1987 (hereinafter SAR). The Demand for Arbitration must contain "a statement setting forth the nature of the dispute, the amount involved, if any, and the remedy sought. . . ."

[21] SAR § 6(b). A party filing a counterclaim must also pay an administrative fee based on the amount of the counterclaim. But see New York Stock Exchange Arbitration Rules rule 612(b)(2)(iii) (1987) (hereinafter NYSE Rules) (a party that does not file an answer may be barred by the arbitrators from "presenting any matter, arguments, or defenses at the hearing"). At present, changes are being considered to the NYSE Rules as well as those of other self-regulatory organizations.

[22] SAR § 43. See NYSE Rules rule 630 for the Exchange's administrative fee structure. A comparison of the AAA and NYSE administrative fees is difficult. The AAA's fee is based on the amount claimed. The NYSE's fee is based on the amount of the claim *and* the number of hearings (NYSE Rules rule 630(a) and (b)). Some comparisons are possible, however, as shown below:

tion.[23] If the basic filing requirements above are met, the Association will proceed with administration.

Following the filing of the Demand for Arbitration, the case is assigned by the AAA to a staff member in the regional office, called a tribunal administrator, who is responsible for overseeing the administration of the case from the time it is filed until it is concluded. The administrator will, within seven days, send a letter to both parties acknowledging receipt of the Demand and enclosing a list of potential arbitrators from which the parties are to make their selection. Both parties have 20 days to examine the list, strike any unacceptable names, and return the list to the administrator.[24]

Expedited Procedures

Where the disclosed claims of all parties are less than $20,000, exclusive of interest and arbitration costs, disputes are administered under special expedited procedures at a flat administrative fee of $300.[25] Under the expedited procedures, notices are provided by telephone, and relatively short time periods (generally ten days) are provided for various administrative items. Cases are heard by one arbitrator, selected from a list of five names and biographical sketches provided to the parties. Hearings are generally concluded in one day, and awards are due within ten days after completion of the hearings (awards are due within 30 days under the regular procedures).[26] The rules also presume that oral hearings are waived where the claims of both parties are less than $5,000, unless a party objects to this procedure.[27]

Arbitrators

The arbitrators that the Association lists are not AAA employees; rather, the AAA maintains a panel of more than 55,000 qualified arbitrators who have volunteered to serve on AAA arbitration cases.[28] Individuals may be nominated to become arbitrators by attorneys, parties, industry trade groups, other arbitrators, AAA staff, or may be self-nominated. Applications are carefully screened by the Association's Panels Department before individuals are placed on the panel. The Association also conducts periodic training of arbitrators.

Number of Arbitrators

The rules provide that where the disclosed claim of any party exceeds $20,000, exclusive of interest and arbitration costs, the dispute is heard and determined by three arbitrators.[29] All other cases are heard by one arbitrator, unless the parties otherwise agree.

Qualifications of Arbitrators

In a one-arbitrator case, the arbitrator cannot be affiliated with the securities industry. In a three-arbitrator case, only one of the arbitrators can be affiliated with the securities industry.[30] Each party receives an identical list containing two "blocks" of names; one block contains the

A $1,000 claim with one hearing—AAA: $300; NYSE: $15.

A $20,000 claim with one hearing—AAA: $300; NYSE: $400.

A $50,000 claim with two hearings—AAA: $1,100; NYSE: $1,000.

A $100,000 claim with three hearings—AAA: $1,500; NYSE: $2,250.

A $500,000 claim with four hearings—AAA: $2,650; NYSE: $4,000.

Which forum's fees are less will depend in large part on the size of the claim and the number of hearings. The AAA also assesses a charge of $75 per party for the second and subsequent hearings, but only if the hearing is held in an AAA hearing room or is clerked by the AAA.

[23] But see NYSE Rules rule 603 (no dispute will be eligible for arbitration where more than six years have elapsed from the act or occurrence underlying the dispute).

[24] SAR § 13. Compare NYSE Rules rules 607 and 608 (no lists of proposed arbitrators sent; NYSE director of arbitration appoints arbitrator, subject to one peremptory challenge per party).

[25] SAR § 9. Compare NYSE Rules rule 601 (claims of $5,000 or less subject to "simplified arbitration").

[26] SAR §§ 57 and 41.

[27] SAR § 37.

[28] SAR § 4.

[29] SAR § 17. But see NYSE Rules rule 607 (three to five arbitrators appointed by NYSE director of arbitration; five arbitrators if claim exceeds $500,000).

[30] SAR § 13. See NYSE Rules rule 607 (majority of arbitrators "not from the securities industry").

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names of five proposed arbitrators who are affiliated with the securities industry, and one block contains the names of ten proposed arbitrators who are not affiliated with the industry. The parties are given the opportunity to review the list and return it, striking the names of unacceptable arbitrators. The AAA forms the panel from among those persons remaining on the list—one arbitrator from the first block, and two from the second.

Although the rules do not define the term "affiliated with the securities industry," the AAA has administratively defined the term as follows: "persons who have, directly or indirectly, within the last five years been employed by or acted as counselors, consultants, advisers, or attorneys to any SRO or SRO affiliate." Partners or employees in law firms that derive substantial income from representing SROs or SRO affiliates are considered to be affiliated with the securities industry.[31]

The arbitrators appointed must be completely impartial and are obligated to disclose any past, present, or potential relationships, business or personal, with the parties, their attorneys, planned witnesses, and others involved in a case.[32] The AAA is empowered to remove an arbitrator from a case where a relationship is disclosed that might affect the arbitrator's impartiality.[33]

Arbitrator Compensation

Under the securities rules, arbitrators are asked to volunteer one day of service. In order to attract a sufficient number of qualified arbitrators, the rules provide that if a case goes on longer than one day, arbitrators will be compensated by the parties for the second and subsequent days of hearing.[34]

Arbitrator Appointment

When the lists of arbitrators are returned, the administrator will compare them to see if any of the names proposed were acceptable to both parties. Mutually acceptable arbitrators are contacted by the administrator to see if the arbitrators are available to serve. If the parties are unable to agree on a name, the Association is empowered under its rules to appoint an arbitrator whose name was not on the list.[35]

Prehearing Procedures

Like the Commercial Arbitration Rules, the Securities Arbitration Rules provide for an administrative conference or a preliminary hearing in larger, more complex cases, and also permit the arbitrator to grant interim relief.[36] At the administrative conference, which is run by a senior member of the AAA staff, the following items, among others, are addressed: technical qualifications and method of appointment of arbitrators; compensation arrangements; estimates for length of hearings; grouping of hearing dates; approximate commencement date for hearings; and arrangements for hearing room facilities.

The purpose of the preliminary hearing, which is conducted by the arbitrator, is to establish an orderly procedure for the parties' preparation and presentation of large, complex arbitrations. Among the topics discussed are specification of claims and counterclaims; stipulation of uncontested facts; schedule for the exchange of information, including any reports from experts; lists of witnesses, including expert witnesses; advance identification of exhibits; estimated length of case and of hearings; number of copies of exhibits to be made; briefs; and conduct of hearing and concluding remarks. In addition, directions for exchanging documentary and other information will be confirmed in a prehearing directive, which may be issued by the arbitrators following the preliminary hearing. Any controversies regarding exchanges of information will be resolved by the arbitrators.

The Securities Arbitration Rules also provide for a voluntary mediation conference. The mediator generally will not be one of the arbitrators appointed to the case. The mediation is conducted pursuant to the AAA's Commercial Mediation Rules, without payment of an additional administrative fee. In mediation, the neutral assists the parties in reaching a settlement but does not have the authority to make a binding decision or award. Mediation has proved to be an effective method for settling a wide variety of disputes, boasting a 75–80 percent success rate.

The Hearing

After the arbitrator is appointed, the matter is scheduled for a hearing, which generally takes place shortly after the appointment of the arbitrator. Hearing dates are usually arranged, with the consent of the parties, at least 14 days in advance, but the arbitrator is empowered to set a date if necessary.[37]

The rules give parties the absolute right to be represented by counsel or other authorized representative,[38] and a great majority of parties exercise that right. A court reporter is not present unless specifically requested and arranged for by a party, who then bears that expense.[39] The hearing proceeds in an informal manner in that the arbitrators are not bound by strict rules of evidence[40] and therefore have great latitude in what testimony and evidence they will accept. The procedures in the hearing are somewhat similar to those

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[31] Definition drawn from Neal Brown, G. Richard Shell, and William Tyson, "Arbitration of Customer–Broker Disputes Arising Under the Federal Securities Laws and RICO," *Securities Regulation Law Journal* 15 (1987): 35.

[32] SAR § 19. See NYSE Rules rule 610 (arbitrators to disclose "any circumstances which might preclude such arbitrator from rendering an objective and impartial determination").

[33] *Id.*

[34] SAR § 50.

[35] SAR § 13.

[36] SAR §§ 10 and 34. There are no analogous sections in NYSE Rules, although rule 638 requires the parties to exchange documents at least ten days before the hearing. Arbitrators may exclude from the hearing any documents not exchanged.

[37] SAR § 21. Compare NYSE Rules rule 613 (eight business days' advance notice of hearing).

[38] SAR § 22. Compare NYSE Rules rule 614 (representation by counsel only).

[39] SAR § 23. See NYSE Rules rule 624, to similar effect.

[40] SAR § 31. See NYSE Rules rule 621, to similar effect.

in a court case, however; each side makes an opening statement, testimony is taken, witnesses are cross-examined, and the evidence is introduced.[41]

The Award

The arbitrator's award must be rendered within 30 days of the closing of the hearings, unless the parties have agreed upon another time frame.[42] The parties may agree to extend the initial due date,[43] but neither the AAA nor the arbitrator has such power.[44] If the parties arrange for the filing of posthearing briefs, the hearings do not formally "close" until the final date set by the arbitrator for the receipt of briefs.[45]

The award must be signed by the sole arbitrator or a majority of the arbitrators in a multi-arbitrator case.[46] The arbitrator may grant "any remedy or relief which the arbitrator deems just and equitable and within the scope of the agreement of the parties. . . ."[47] Unless specifically requested by the parties, the award will generally not be accompanied by an opinion. The rules require, however, that the award contain "a statement regarding the disposition of any statutory claims" raised by the parties.[48]

Because the enforceability of awarding punitive damages in arbitration varies among jurisdictions, the rules neither permit nor prohibit claims involving punitive damages. Parties who raise this issue should brief the arbitrators, who must determine whether to permit the interposition of a punitive damages claim. If permitted, an additional administrative fee of 1/10 of 1 percent of the punitive damages claimed is assessed. The rules also specifically empower the arbitrators to allocate the fees and expenses of any witness.[49]

Legal delivery of the award may be made by mail or personal service.[50] The award can then be promptly confirmed in a simplified court proceeding and judgment entered on the award, making it as binding as a decision of a judge.[51]

Other Features

The securities rules specifically permit the use of written forms of electronic communication, such as facsimiles, telexes, and telegrams.[52] They also permit a party to initiate a case by the payment of a $300 filing fee. The balance of the fee, which is calculated from a fee schedule similar to that contained in the Commercial Arbitration Rules, is due 90 days after commencement of AAA administration. The AAA's fee is capped for claims exceeding $50 million, so that one administrative fee applies.[53]

INTERNATIONAL CASES

In order to best serve the parties in international arbitrations, the AAA devised the Supplementary Procedures for International Commercial Arbitration, which may be used in conjunction with various sets of arbitration rules. These procedures do not supersede any provision in the applicable rules but merely codify various procedures that are used in international arbitrations. Among the more interesting features are provisions governing consecutive hearing days,[54] language of the hearings,[55] and opinions.[56] The thrust of the procedures is to expedite international commercial arbitrations and to keep them as economical as possible. In a case involving a panel of non-U.S. nationals, for instance, the AAA attempts to appoint resident foreign nationals in order to minimize travel expenses.

LARGE, COMPLEX CASES

Recognizing that large, complex commercial arbitration cases often present unique procedural problems, the AAA, working with attorneys, arbitrators, and industry advisory groups, developed guidelines for expediting such cases.[57] These guidelines are applied when the disclosed claim of any party exceeds $250,000, unless there is an objection. Parties may agree to use the guidelines in smaller cases as well. The guidelines provide for an early administrative conference and a preliminary hearing before the arbitrators. Arbitrators generally serve on a consecutive-day basis. Under the guidelines, the AAA will make the necessary arrangements to have party-appointed arbitrators serve as neutrals, thereby avoiding problems that have arisen in cases using partisan arbitrators. The guidelines contemplate that adjournments will be granted only for good cause. If desired by the parties, the AAA will make arrangements for the arbitrators to write an opinion.

CONCLUSION

People involved in the securities field will remember 1987 for two reasons: the *McMahon* case, followed by "Black Monday"—October 19. These two events will undoubtedly be seen as the linchpin for the widely expanded use of arbitration to resolve customer–broker disputes. By promulgating its Securities Arbitration Rules, the American Arbitration Association hopes to play an important role in providing a neutral forum for resolving these conflicts. ■

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[41] SAR § 29. See NYSE Rules rule 628(d), to similar effect ("arbitrators shall endeavor to render an award within thirty [30] business days. . .").

[42] SAR § 41.

[43] SAR § 39.

[44] *Id.* See NYSE Rules rule 628(a), to similar effect.

[45] SAR § 35.

[46] SAR § 38.

[47] SAR § 43.

[48] SAR § 42. There is no analogous rule in the NYSE Rules.

[49] SAR § 49. See NYSE Rules rule 630(f), to similar effect.

[50] SAR § 45. See NYSE Rules rule 628(c), to similar effect.

[51] See, for example, Uniform Arbitration Act §§ 11 and 14 (1985).

[52] SAR § 40. There is no analogous rule in the NYSE Rules.

[53] See SAR Administrative Fee Schedule.

[54] Supplementary Procedures for International Commercial Arbitration § 5. New York: American Arbitration Association, 1985 (consecutive hearings the norm) (hereinafter Supplementary Procedures).

[55] Supplementary Procedures § 6 (AAA decides if parties cannot agree, with consideration given to nationality of parties, attorneys and witnesses, and location of hearings).

[56] Supplementary Procedures § 7 (opinions encouraged).

[57] Guidelines for Expediting Larger, Complex Commercial Arbitrations. New York: American Arbitration Association, 1987.